

FILED

JUN - 1 2016

Clerk, U.S. District Court
District Of Montana
Billings

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
BILLINGS DIVISION

UNITED STATES OF AMERICA,

Plaintiff/Respondent,

vs.

WILLIE ANTOINE REDD,

Defendant/Movant.

Cause No. CR 13-45-BLG-SPW
CV 16-65-BLG-SPW

ORDER DENYING § 2255 MOTION
AND DENYING CERTIFICATE OF
APPEALABILITY

On May 31, 2016, Defendant Redd filed a motion to vacate, set aside, or correct the sentence under 28 U.S.C. § 2255. Redd is a federal prisoner proceeding pro se.

Redd was convicted of being a felon in possession of a firearm, a violation of 18 U.S.C. § 922(g). At sentencing, his base offense level was determined, in part, by the fact that he had previously been convicted of a crime of violence. *See* U.S.S.G. § 2K2.1(a)(4)(A); Presentence Report ¶ 24. He was sentenced to serve 78 months in prison, to be followed by a three-year term of supervised release. Judgment (Doc. 74) at 2-3.

Based on *Johnson v. United States*, __ U.S. __, 135 S. Ct. 2551 (2015), Redd contends that his sentence should not have been predicated on any prior conviction for a “crime of violence.” *See* Mot. § 2255 (Doc. 94) at 1. But Redd

was convicted in Colorado in 2008 of felony menacing, a violation of Colo. Rev. Stat. § 18-3-206. *See* Presentence Report ¶ 60. Ninth Circuit law holds that a felony conviction for menacing under Colorado law is categorically a crime of violence because it “has as an element the use, attempted use, or threatened use of physical force against the person of another.” *See* U.S.S.G. § 4B1.2(a)(1); *see also* U.S.S.G. § 2K2.1 Application Note 1; *United States v. Melchor-Meceno*, 620 F.3d 1180, 1186 (9th Cir. 2010).

Assuming, as Redd argues, that *Johnson* invalidates sentences imposed in reliance on the residual clause of U.S.S.G. § 4B1.2(a)(2), Redd’s sentence relied on U.S.S.G. § 4B1.2(a)(1). Therefore, *Johnson* does not alter the characterization of Redd’s felony conviction for menacing as a “crime of violence.”

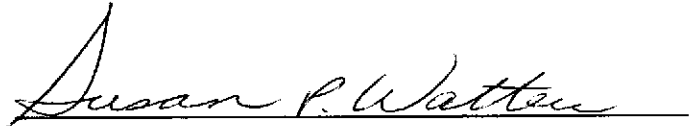
A certificate of appealability is denied on all issues. Redd’s case is controlled by *Melchor-Meceno*, 620 F.3d at 1186.

Accordingly, IT IS HEREBY ORDERED as follows:

1. Redd’s motion to vacate, set aside, or correct the sentence under 28 U.S.C. § 2255 (Doc. 94) is DENIED for lack of merit.
2. A certificate of appealability is DENIED on all issues. The clerk shall immediately process the appeal if Redd files a notice of appeal.
3. The clerk shall ensure that all pending motions in this case and in CV 16-65-BLG-SPW are terminated and shall close the civil file by entering judgment in

favor of the United States and against Redd.

DATED this 15th day of June, 2016.

A handwritten signature in cursive script, reading "Susan P. Watters", written over a horizontal line.

Susan P. Watters
United States District Court